

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 223 of 1996

in

SPECIAL CIVIL APPLICATION No 1859 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMBHAI MOTILAL PARIKH

Versus

AHMEDABAD EDUCATION SOCIETY

Appearance:

MR AMAR D MITHANI for Appellant

MS KJ BRAHMBHATT for Respondent No. 1

MR. MUKESH PATEL, AGP for Respondent No.2

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 13/07/1999

ORAL JUDGEMENT [PER : C.K. THAKKAR, J]

Admitted. MS. KJ Brahmbhatt appears and waives service of notice of admission on behalf of respondent no.1 and Mr. Mukesh Patel, AGP appears and waives service of notice on behalf of respondent no.2. In the

facts and circumstances, the matter is taken up for final hearing today.

This appeal is filed against the judgment and order passed by the learned Single Judge on 2nd February, 1996 in Special Civil Application No. 1859 of 1982. It is not disputed by and between the parties and it is clearly reflected in the judgment of the learned Single Judge that none was present for the parties when the matter was called out for hearing, and was heard. From record, it further appears that on 22nd December, 1995, the matter was posted for hearing on the board of the learned Single Judge at Sr.No.10. The entry which made part of record of Letters Patent Appeal shows that appearances which have been shown on Board were as under:-

Mr. GN Desai for the Petitioner

MR MD Pandya for the Respondent.

It is undisputed that neither Mr. GN Desai was appearing for the petitioner nor Mr. MD Pandya was appearing for the respondent. Again on 2nd February 1996, the board of the learned Single Judge was prepared and above appearance was shown. The matter was shown on board for pronouncement of judgment and judgment was pronounced.

In the memorandum of appeal, it is stated that attention of the learned Single Judge was drawn and a request was made stating that neither Mr. GN Desai was appearing for the petitioner nor Mr. MD Pandya was appearing for the respondent and that advocate appearing for the petitioner was also elevated to the Bench of this Court. It was also stated that Mr. Amar D. Mithani had already filed his appearance on 20th December, 1995. His appearance was, however, not shown.

In light of the facts and circumstances, in our opinion, ends of justice would be met if we set aside the order passed by the learned Single Judge.

No doubt, Ms. Brahmabhatt submitted that the order was passed by the learned Single Judge on merits and there is no legal infirmity therein. We state that we express no opinion on merits of the matter and leave all contentions of the respective parties open.

For the above reasons, Letters Patent Appeal is allowed and order passed by the learned Single Judge is quashed and set aside. The matter will now go back before the learned Single Judge and the learned Single Judge will decide the same on merits. It is open to the parties to take all contentions. Appeal is accordingly disposed of. In the facts and circumstances, no order as to costs.

13.07.1999 [C.K. THAKKAR, J]

[C.K. BUCH, J]

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